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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 614

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, INTERNATIONAL,

Petitioner,

vs.

NATIONAL MEDIATION BOARD; FRANCIS A. O'NEILL, JR., INDIVIDUALLY AND AS CHAIRMAN OF THE NATIONAL MEDIATION BOARD; ROBERT O. BOYD, INDIVIDUALLY AND AS MEMBER OF THE NATIONAL MEDIATION BOARD; LEVERETT EDWARDS, INDIVIDUALLY AND AS MEMBER OF THE NATIONAL MEDIATION BOARD; AIR LINE PILOTS ASSOCIATION, INTERNATIONAL; UNITED AIR LINES, INC.; AND BRANIFF INTERNATIONAL AIRWAYS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF OF UNITED AIR LINES, INC. IN OPPOSITION.

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OPINION BELOW, JURISDICTION, CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The petition adequately states the Opinion Below, Jurisdiction, and Constitutional and Statutory Provisions Involved.

QUESTIONS PRESENTED.

1. Whether the Railway Labor Act prohibits a labor organization which represents air line pilots, some of whom exercise command functions during flight over other crew members including stewardesses, from also representing stewardesses.

2. Whether the National Mediation Board denied petitioner due process by refusing to hold a formal hearing on the above question.

STATEMENT.

A labor organization known as the Air Line Stewards and Stewardesses Association ("ALSSA") had been recognized by respondent United Air Lines, Inc. since 1946 as the duly authorized representative for the purposes of the Railway Labor Act of the craft or class of United's employees known as stewards and stewardesses. This organization had been affiliated with respondent Air Line Pilots Association, International ("ALPA"). ALPA is the duly authorized representative for all pilots in the employ of United.

In 1950 a dispute developed between ALSSA and ALPA concerning, in part, the nature of the affiliation between them. As a result of the dispute, two groups claimed to be the legally constituted officers of ALSSA and each group claimed representation rights for United's stewards and stewardesses. Legal action was commenced between the two in the Circuit Court of Cook County, Illinois. As a consequence, United was unable to ascertain with which representative it should deal, and United's stewardesses were without any effective representation (J. A. 243-4, 268, 305-6).

While the issue of the representation rights of United's

stewards and stewardesses was thus stalemated, ALPA made application to respondent National Mediation Board to investigate a representation dispute under Section 2, Ninth* of the Railway Labor Act (45 U. S. C. § 152, Ninth) among this craft or class of United's employees. By this application ALPA sought a Board-conducted election among the stewards and stewardesses in an effort to become the bargaining representative for this group (J. A. 306).

By letter dated January 30, 1961, petitioner (one of the two factions claiming to be ALSSA) asked the Mediation Board to dismiss ALPA's application on the ground, among others since abandoned, that the duties and responsibilities of pilots as related to stewardesses "[were] basically of a supervisory character," and hence a labor organization representing the pilot craft or class could not also represent the stewardess craft or class (J. A. 92). In the same letter petitioner requested the Board to schedule a "formal hearing" to enable it to introduce evidence on the issues raised in its letter (J. A. 96).

The Board replied on February 10, 1961 (J. A. 99),* stating that the Railway Labor Act contained "no restriction * * * on who may be certified as the representative of the employees or a carrier subject to the Act" (J. A. 99). The letter also stated:

> "However, the Board for many years has had a policy of not certifying a carrier or an officer of a carrier as an employee representative for the purposes of the Act. The Board is of the opinion that the Air Line Pilots Association is not barred, under such

*This section is set out in Appendix A to the petition.

*Petitioner's letter to the Board dated January 30, 1961, and the Board's reply of February 10, 1961, are duplicates, except in minor respects, of letters respecting the representation of stewardesses employed by respondent Braniff International Airways (J. A. 85, 97).

policy, from making application for investigation of a representation dispute involving the employees in question. The Board must, therefore, decline your request for a formal hearing on this subject." (J. A. 99-100).

On February 20, 1961, petitioner filed its complaint (J. A. 1-12) in the District Court for the District of Columbia seeking a declaration that the Railway Labor Act did not confer jurisdiction upon the Mediation Board to certify ALPA as a representative of the stewardesses craft or class and praying that the Court enjoin the Board from conducting any election or certifying the results thereof.

The complaint charged that United had interfered with, influenced and coerced its stewardesses "through the actions of [its] pilots," in violation of Section 2, Third, of the Railway Labor Act (J. A. 9). There was no allegation of independent acts of influence or coercion by United aside from this imputation to it of the conduct of its pilots. United has denied that any of its officials engaged in any organizing activity among the stewardesses (J. A. 307), and this denial has not been challenged.*

The complaint repeated the claim made to the Mediation Board that the pilots were supervisors and representatives of the carrier in dealing with its stewardesses, relying on Section 40.351(c) of the Civil Air Regulations (14 C. F. R. 82) (J. A. 7).

Although the complaint suggests that the Civil Air Regulations provide that all pilots "shall be in command

* This denial is contained in an affidavit prepared by Charles M. Mason, United's then Vice President-Employee Relations. This affidavit was filed by United in opposition to petitioner's motion for a temporary restraining order and preliminary injunction, and was subsequently submitted in support of the motion for summary judgment filed by the Mediation Board (J. A. 321).

of the crew," the regulation is in fact limited to the first pilot, or pilot in command, only. The regulation provides:

> "*Responsibility of pilot in command.* The pilot in command shall during flight time be in command of the airplane and crew and shall be responsible for the safety of the passengers, crew members, cargo, and airplane" (14 C. F. R. 82).

The interpretation by the Civil Aeronautics Board, also relied on by petitioner in the complaint, is as follows:

> "The Board interprets and construes § 40.351(c) as conferring *on the pilot in command*, with respect to matters concerning the operation of the airplane, full control and authority without limitation over all other crew members and their duties *during flight time*, whether or not he holds a valid certificate authorizing him to perform the duties and functions of such other crew member" (14 C. F. R. 82. Emphasis added).

The complaint also alleged that United had vested in its pilots authority to remove stewardesses from active duty, to recommend and discharge, to discipline them, to assign them duties, to direct their performance of duties and to recommend that they be rewarded or disciplined (J. A. 7-8). This allegation, which was not verified, was denied in the Mason affidavit, which states that United pilots have no authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline any other employee or to adjust their grievances or to effectively recommend such action. This affidavit states that United's first pilots are restricted in their command function to the necessities of flight operations as required by federal regulation (J. A. 309).

It was alleged that the failure of the Mediation Board to conduct a hearing as requested by petitioner was a denial to it of due process (J. A. 8).

After refusal of the District Court to restrain the Board

in its holding of the election an election among United's stewardesses was conducted with the following results (J. A. 351):

Number of Employees on Eligible List	1223
ALPA	891
AL88A	178
Transport Workers Union of America, AFL-CIO	4
International Brotherhood of Teamsters	1
Number of Void Ballots	7

United and ALPA had filed motions to dismiss the complaint and the Mediation Board had filed a motion for summary judgment or to dismiss, with supporting affidavits (J. A. 242, 321, 335). On May 5, 1961, the District Court granted the Mediation Board's motion for summary judgment and United and ALPA's motion to dismiss, on the ground that the Court was without jurisdiction over the subject matter (J. A. 352).

On the same day, a stay of certification of ALPA by the Mediation Board was requested by petitioner from the Court of Appeals for the District of Columbia, which request was denied (J. A. 355, 364).

On July 13, 1961, the Court of Appeals, in a *per curiam* opinion, affirmed the order of the District Court. The Court held that the Mediation Board was acting within its statutory authority, and that "[T]he District Court rightly dismissed the suit for lack of jurisdiction under *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297 (1943)." (Appendix C to Petition).

ARGUMENT.

I.

Petitioner's first reason for granting the writ is that its constitutional right to due process was violated when the Mediation Board declined petitioner's request for a "formal hearing" on the issue raised in its letter of January 30, 1961 to the Board (J. A. 91, 96). Petitioner acknowledges (Pet. 14) that this Court held in *Switchmen's Union v. National Mediation Board*, 320 U. S. 297, 304 (1943) that the Mediation Board—as distinguished from committees appointed by it—is not required to conduct a hearing in its investigatory duties under Section 2, Ninth. Petitioner suggests, however, that the Court could not have intended its ruling in *Switchmen's* to apply where the Board is presented with "disputed factual issues" (Pet. 11).

The *Switchmen's* opinion says that (320 U. S. 297, 304):

> "While the Mediation Board is given specified powers in the conduct of elections, there is no requirement as to hearings. * * * And its only ultimate finding of fact is the certificate."

The statement that "there is no requirement as to hearings" obviously applies to the entire proceeding "in the conduct of elections", including whatever factual aspects are involved. The passage could not have been intended to be limited to those factual issues as to which the parties were in agreement, as petitioner's argument implies, for no hearing would then be required in any event.

Furthermore, even under petitioner's interpretation of *Switchmen's*, this case raises no factual issue which would have justified a formal hearing. In its letter to the Board

(J. A. 91) petitioner asked that ALPA be ruled ineligible to represent the stewardesses because of the "supervisory" status of its pilot members. This contention was based upon an erroneous theory of law, since the Act places "employees" and "subordinate officials" in the same category (Section 1, Fifth; 45 U. S. C. § 151, Fifth), does not bar them from being represented by the same union, and, as the Board stated, imposes no restriction "on who may be certified as the representative" of a craft or class under the Act (J. A. 99). The Board's interpretation of its own policy against certifying as an employee representative a carrier or officer thereof (which clearly meant corporate officials as distinguished from personnel in command of individual aircraft) as inapplicable to airline pilots raised no factual question.

II.

The *Switchmen's* case, 320 U. S. 297 (1943) held that determinations of the National Mediation Board in representation cases were not subject to judicial review. As did the petitioner in *UNA Chapter, Flight Engineers' International Association* v. *National Mediation Board*, 294 F. 2d 905 (App. D. C. 1961), No. 531, October Term, 1961, *certiorari denied* January 8, 1962, petitioner here argues that its case comes under *Leedom* v. *Kyne*, 358 U. S. 184 (1958) which held that a certification of the National Labor Relations Board could be reviewed to see if it contravened a provision of the applicable statute. But no provision of the Railway Labor Act precluded the Mediation Board from holding that stewardesses could be represented by ALPA if they made their preference known in a duly conducted election. Indeed, for the Board to have held otherwise would have been in violation of the statute.

Petitioner's theory is that because pilots exercise in-flight command functions over stewardesses, the pilots are exercising management prerogatives, and that their repre-

sentation of the stewardesses accordingly constitutes interference, coercion and influence by the carrier in violation of Section 2, Third and Fourth of the Act (45 U. S. C. § 152, Third, Fourth). Since pilots are also in command of co-pilots and flight engineers, and conductors of trains are similarly in command of brakemen and flagmen, petitioner's reasoning would make it unlawful for pilots to be in the same union with co-pilots or flight engineers, or conductors to be in the same union with brakemen or flagmen. The contrary has been the practice since the Railway Labor Act was first enacted. See National Mediation Board Annual Report, 1960, pp. 84-86, 90; Mason Affidavit, par. 12, J. A. 309. Indeed, in the *Flight Engineers'* case, *supra*; in which certiorari was denied by this Court on January 8, 1962, the grouping of pilots, co-pilots and flight engineers in a single bargaining unit was upheld.

Clearly, it does not follow from the exercise of in-flight command functions over stewardesses that pilots occupy the status of management with respect to such stewardesses. Petitioner's assertion that "inasmuch as pilots are supervisors of stewards and stewardesses [they] stand in the relation of employers * * *" (J. A. 94) is simply a *non sequitur* as to any of the aspects of management pertinent to the choice of a bargaining representative. Pilots may be included in a separate bargaining unit, as are conductors on the railroads, but they can hardly be regarded as a part of corporate management. This is evident from the number of strikes which ALPA has called against various airlines. Petitioner's entire case rests on this unwarranted treatment of the pilots' command functions as the equivalent of management by the carrier, and it falls with the weight of the premise upon which it rests.

The distinction which petitioner would draw between supervisory and non-supervisory personnel, while manifest in the National Labor Relations Act on which petitioner

relies, simply does not appear in the Railway Labor Act. To the contrary, the Railway Labor Act defines an employee of a carrier as any person who performs work as "an employee or subordinate official" (Sections 1, Fifth and 201; 45 U. S. C. §§ 151, Fifth and 181), and its provisions do not treat the two types of employees differently in any way or prevent them from choosing the same bargaining representative if they so desire. From a corporate or labor-management point of view, a pilot is not even a subordinate official, much less a management representative.*

The Railway Labor Act provision is to be contrasted with the definition of employee found in § 2(3) of the National Labor Relations Act (29 U. S. C. § 152(3)), which specifically excludes therefrom "any individual employed as a supervisor," and with other provisions of that Act setting supervisors apart from other employees, *viz.*, § 2(11), 29 U. S. C. § 152(11); § 2(13), 29 U. S. C. § 152 (13); § 14(a), 29 U. S. C. § 164(a).

In an effort to bring its case within *Leedom* v. *Kyne*, petitioner asserts that the Mediation Board violated the "clear and mandatory provisions" of the Railway Labor Act. But *Leedom* v. *Kyne* was concerned with a specific provision in the National Labor Relations Act which prohibited including professional and non-professional employees in the same bargaining unit unless a majority of the professional employees approved by separate vote (Section 9(b)(1), 29 U. S. C. § 159(b)(1)). There is no comparable provision in the Railway Labor Act prohibiting

*"The relationship of labor and management in the railroad industry has developed on a pattern different from other industries. The fundamental premises and principles of the Railway Labor Act are not the same as those which form the basis of the National Labor Relations Act, 49 Stat. 449, as amended, 29 U. S. C. § 151, *et seq.*" *Brotherhood of Railway Trainmen* v. *Chicago River and Indiana Rd. Co.*, 353 U. S. 30, 31 (1957).

members of a flight (or train) crew, or even subordinate officials, from being in the same class or craft as the other crew members whom they command en route. And this case does not involve putting supervisory and non-supervisory employees in the same bargaining unit, but only whether concededly separate bargaining units can choose to be represented by the same union. Thus *Leedom* v. *Kyne* is completely irrelevant.

Petitioner can point to no provision in the Railway Labor Act which the Mediation Board has flouted. There is here, no administrative "action taken in excess of delegated powers" as occurred in *Kyne* (358 U. S. 184, 190). On the contrary, as we have shown, the Board clearly acted within its statutory authority in ruling that ALPA was eligible to represent United's stewardesses.

This case, as well as the *Flight Engineers* case, *supra*, demonstrates the wisdom of the *Switchmen's* doctrine. If Mediation Board certifications are reviewable, any unsuccessful union which believes it has anything to gain by litigation or delay can prolong the uncertainty in labor relations which accompanies a representation dispute by instituting litigation, no matter how frivolous or unsubstantial its claim. Despite the ingenuity of petitioner's able counsel, this case is a good example. Even though, if review were generally available, a court might on occasion overturn a Board certification, the public benefit therefrom would be far overbalanced by the public injury resulting from general delay in the settlement of representation disputes on the railroads and airlines.

CONCLUSION

For the reasons hereinabove set forth, respondent United Air Lines, Inc., respectfully prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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